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THE LOS ANGELES BAR ASSOCIATION

BULLETIN

Official Publication of the Los Angeles Bar Association, Los Angeles, California

MEMBERS:

Are You Accepting the Opportunities of Your Membership?

If not, it is **your** fault; for —

The **Los Angeles Bar Association,** with a membership of 2250 —

1. Is affiliated with 12 other Bar Associations of the County.
2. Has 38 Committees, with **over 350** members, working for the advancement of **your** interest in the profession.
3. The columns of THE BULLETIN are open to pass on your ideas to 2500 leading lawyers.
4. Monthly meetings and committee work furnish opportunities to know your fellow lawyers.
5. Has taken its place as a force for civic betterment.
6. Is performing a real duty to the public in furthering the administration of justice.
7. Stands militantly for a clean, fearless, and able bench.
8. Is administered **by** the members, **for** the members and the public.

What are **you** doing to aid this professional and public service?

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Summary Report of Recall Committee

TO BOARD OF TRUSTEES, LOS ANGELES BAR ASSOCIATION

On April 14th last, the Judiciary Committee of the Los Angeles Bar Association filed its report with the Board of Trustees recommending the resignation or recall of judges John L. Fleming, Walter Guerin and Dailey Stafford. At that time these judges were members of the Superior Court Bench of Los Angeles County.

This report was unanimously approved by the Board of Trustees on that day and it thereafter appearing that the judges named did not intend to resign, the Board of Trustees Recall Committee, consisting of Raymond L. Haight, Clyde C. Shoemaker and Harry J. McClean, filing this report, was appointed by Mr. Robert P. Jennings, President of the Association, pursuant to a resolution of the Board of Trustees passed April 21st last. The Recall Committee immediately organized three sub-committees, Legal, Finance, and Managerial. Mr. Clifford F. Burr was named Secretary to the General Committee.

The Legal Committee was placed in charge of Mr. Shoemaker with the following attorneys acting as members thereof: Lawrence C. Cobb, Harold C. Tallmadge, W. H. Douglas.

The Finance Committee was placed in charge of Mr. McClean with the following members thereof: John O'Melveny, Wm. James, Mack Geo. Cohen, Max Felix, Clyde Holley, Robert Jackson, Mortimer A. Kline, Fred Williamson, Tom Nobles, Chandler Ward, to which was later added several of the past Presidents of the Association led by Mr. Norman Bailie. Mr. Bailie performed some very helpful work in completing the task of raising the funds necessary to insure the placing of the Recall issue on the November 8th ballot.

The Managerial Committee was placed in charge of Mr. Haight with Mr. Lowell Matthay, Herbert S. Laughlin and Gerald Wyle. This Committee was also assisted materially by Mr. Thomas H. Kennedy and Mr. Charles Riechie.

As a part of the campaign proper, an independent Committee of lawyers was organized consisting of representatives from the Lawyers Club, the Long Beach Bar Association, the Pasadena Bar Association and the Los Angeles Bar Association.

This was the first time an attempt had ever been made to make use of the provisions of the State Statutes relating to the recall of judges, and a prodigious amount of work fell to the Legal Committee. This was increased somewhat by the fact that it was felt desirable for several reasons to circulate the recall petitions under the direction of the Secretary of the General Committee rather than contract for the work. The circulation of the petitions commenced July 1st and on August 16th petitions containing 310,000 signatures were filed with William Kerr, Registrar of voters of Los Angeles County. A check of the Registrar reveals that 86 per cent of the signatures were found to be valid. It has been reported that this is the highest percentage of valid signatures ever secured on any group of petitions ever filed with the Registrar of Voters.

The Registrar, on August 22nd, certified to the sufficiency of the signatures and forwarded his certificate to Secretary of State Frank C. Jordan on that date. The matter was then referred to the Governor, and as a result, the Recall election was called by Governor James Rolph, Jr., to be held simultaneously with the November general elections. The total cost of securing and precincting the signatures, including office assistance, was $8,648.57, or a cost of 2.8 cents per signature. The placing of the Recall issue on the ballot and the conducting of the campaign of education was made possible through the voluntary contributions of 584 lawyers.

It had not been intended by the Association that the Recall Committee should be called upon to do more than initiate the Recall. Therefore, no extensive plan of campaign was adopted by the Com-

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"The First Year is Hardest"

AVERAGE EARNINGS OF YOUNG ATTORNEYS FOR FIRST TWELVE MONTHS IS LOW

The "Employment Survey" recently made by the State Bar of California, gathered a wealth of interesting data in response to a questionnaire sent to those attorneys who have been admitted on examination, for three years. Some of this data has been printed heretofore.

In answer to the question: "What was your net professional income during the first year of such practice?" 542 reported. Following is a summary of the answers:

Amt.	No. of Attys.	Amt.	No. of Attys.
$ 0	32	$2001-2100	6
1-100	58	2101-2200	2
101-200	62	2201-2300	3
201-300	44	2301-2400	8
301-400	20	2401-2500	1
401-500	32	2501-2600	1
501-600	35	2901-3000	16
601-700	9	3201-3300	3
701-800	28	3401-3500	6
801-900	9	3501-3600	3
901-1000	45	3901-4000	2
1001-1100	3	4101-4200	4
1101-1200	23	4201-4300	1
1201-1300	4	4301-4400	1
1301-1400	6	4401-4500	2
1401-1500	23	4701-4800	2
1501-1600	6	4901-5000	3
1601-1700	3	5901-6000	1
1701-1800	15	6401-6500	1
1901-2000	18	9901-10000	1

Total 542

The average for the above is $986.00.

mittee. However, after it became certain that the Recall issue was to appear upon the November ballot, each of the three judges named commenced a separate campaign of considerable proportions. This fact, coupled with the further fact that many misstatements and false charges were being made by various persons over the radio and elsewhere with reference to the intent and purpose of the Recall, all of which tended to confuse the Recall issue, made it necessary that certain steps be taken to keep the public informed as to the merits of the Recall program.

The actual campaign, for this purpose, extended over a period of sixty days commencing September 8th and ending November 7th. Practically all of the work was limited to personal contacts made through the Committee and its Secretary, Mr. Burr. The total expenditures of all sorts having to do with the campaign, including overhead, radio, billboard and newspaper advertising was $2,248.96 or $749.65 per judge recalled. Even this expenditure would not have been necessary had it not been for the development of the conditions above recited.

Numerous personal attacks were made by certain of those opposing the Recall upon both the Judiciary and Recall Committees, as well as upon the Board of Trustees of the Association. While the various assertions made were wholly without foundation and irrelevant to the issues involved, they tended to confuse the voters and should have been refuted in some manner. Unfortunately time and lack of funds did not afford an opportunity to do this.

The General Committee was aided materially by the organization of a Citizens Recall Committee which consisted of a group of outstanding business men who banded together for the purpose of convincing the voters of the civic need for maintaining a clean judiciary. No funds were expended by that Committee, however.

Many civic organizations, such as the Los Angeles Chamber of Commerce, the Municipal League, and the Southern California Methodist Ministers' Association were of tremendous help in furthering the campaign. In addition, the Lawyers Club, the newspaper publishers and others too numerous to list here, played a large part in the performance of the work to be done. The Committee recommends to the Board of Trustees that through President Jennings, expressions of appreciation for the assistance rendered by these various groups be forwarded to them.

Each member of the General Committee has at all times regretted exceedingly the necessity for the performance of the task in their charge. In unison with the Bar at large, chagrin has been felt that such drastic action became urgent. It was recognized that the imperative need for a fearless, impartial judiciary of unquestioned integrity transcended all other considerations. A pledge was made that the stand taken for such a judiciary would be maintained. It is a pledge which must not be forgotten.

Dated, this 14th day of November, 1932.

Raymond L. Haight
Clyde C. Shoemaker
Harry J. McClean
Members of Recall Committee.

On October 5, Charles H. King passed away, and was buried on October 8.

Mr. King was born in Grand Rapids, Michigan, but grew up in Waukegan, Illinois. He graduated from the Liberal Arts Department of Northwestern University in 1896, and from the Law Department in 1899. In 1900 he married Miss Edith Patterson, who was also in the Liberal Arts Class of 1896. They have two children, a son and a daughter.

Mr. King practiced law in Waukegan, until 1920, when he came to Los Angeles, where he practiced up to the time of his death.

Pitfalls of Appellate Procedure Pointed Out By Justice Thompson

HELPFUL AND PRACTICAL SUGGESTIONS PRESENTED TO CALIFORNIA LAWYERS

JUSTICE IRA THOMPSON of the District Court of Appeal, Second Division, at Los Angeles, delivered an address before the Los Angeles Bar Association members at the October meeting that contained so much valuable material and helpful suggestions on appellate practice, that THE BULLETIN prints the main portions of it in this number. It should prove valuable for reference.

Partly due to the disinclination of our profession to place serious limitations upon the right of appeal and partly due to the natural inclination of the litigant to pursue what he considers his right until the court of last resort has spoken, the calendars of the appellate courts throughout the country have increased tremendously. We have traveled a long way since the time when Webster and his adversaries could actually consume days in the presentation of argument. Even I can remember when we consumed three days in arguing to a trial court an objection to the introduction of any evidence on the ground that the complaint was insufficient, but I should not like to attempt to appropriate so much time today.

With these thoughts as a background let me attempt to point out some of the pitfalls of appellate procedure. Now and then some lawyer discovers that he has not taken an appeal, although he was resting secure in his opinion that it was perfected. This result occurs by confusing the notice to prepare the transcript provided for by section 953a of the C.C.P. with the notice of appeal required by section 940 of that code. The courts have been rather liberal in their construction of the notice under the former section, but sometimes no reasonable interpretation will save the appeal. It is a good thing to remember as is said in *Aregood v. Traeger*, 94 Cal. App. 227, quoting from an opinion of the supreme court in denying a rehearing in *Smith v. Jaccard*, 20 Cal. App. 580.

About Section 953-a

"The District Court of Appeal, in its opinion, says that section 953a of the Code of Civil Procedure 'provides that the appellant shall file his notice of appeal with the clerk.' This section has been misapprehended by some practitioners, and lest there be further misapprehension by reason of this language we take occasion to correct it.

"Section 953a does not provide at all for a notice of appeal. The purpose of that section, in connection with sections 953b and 953c, is to provide a method of preparing the record or transcript to be filed in the proper appellate court in support of the appeal. None of the proceedings there prescribed are jurisdictional to the appeal." In the case of *Title Guarantee and Trust Company v. Lester*, 84 C.D. 278, the supreme court in discussing the notice given under 953a says: "Assuming such notice to be essential to the preparation and certification of a **clerk's** transcript, as distinguished from a reporter's transcript (in this connection see *Miller v. Price*, 203 Cal. 772, 775, 265 Pac. 931, and *Pioneer Truck Co. v. Hawley*, 39 Cal. App. 481, 179 Pac. 447), it has repeatedly been held that none of the proceedings prescribed in sections 953a, b and c, is jurisdictional to an appeal already taken. (*Smith v. Jaccard*, 20 Cal. App. 280, 287, 288, 128 Pac. 1023; *Lynch v. Coe*, 203 Cal. 422, 423, 264 Pac. 747; *Tasker v. Warmer*, 292 Cal. 445, 449, 261 Pac. 474.)"

The alternative method of appeal was repealed in 1921.

Filing of Transcript

Almost every regular motion calendar we have from one to three motions to dismiss appeals on the ground that the transcript has not been filed within the required time, when the proceeding to settle the transcript has been initiated in the trial court by the giving of the notice

just referred to; and there has been considerable if not an undue delay but nothing has been done in that court to terminate the proceeding. Of necessity the appeal cannot be dismissed. The last sentence of Rule I reads, "If the transcript for use on appeal is prepared under the provisions of section 953a of the Code of Civil Procedure and a notice is filed by the appellant requesting a transcript under said section, the time for filing the transcript of the record on appeal shall not begin to run until such transcript is approved and certified as required by law, or **until the proceeding to obtain the same has been terminated in the court below by dismissal or otherwise.**", and to the same effect if you are interested we may refer to *Mill Valley v. Mass. etc. Co.,* 189 Cal. 52; *Crocker v. Crocker,* 76 Cal. App. 606; *Engstrom v. Atkins,* 102 Cal. App. 393; and *Brashears v. Giannini,* 70 C.A.D. 900.

I have been asked whether there was a preference for a transcript prepared under the old method containing a bill of exceptions or the alternative method. From conversation I can say that some of the justices prefer one and some the other. I have a preference for the former, probably because I started to prepare records on appeal under that system. However, if under section 953c of the Code of Civil Procedure and section 3 of Rule VIII sufficient of the transcript is properly printed in the brief to give a thorough and complete understanding of the points to be presented there may be a difference in form but not in substance. In fact, for failure to print the substance of the pleadings and the nature of the action the appeal may be dismissed. *Birkland v. Ratterree Land Co.,* 70 C.A.D. 798; also *Haines v. Commercial Mortgage Co.,* 205 Cal. 71.

New Rule or Statement

I rather imagine that you are interested in section 2 of Rule VIII which went into effect on July 1 of this year. That section reads as follows:

"A statement of the question involved on an appeal in a civil action shall be set forth on the first page of the appellant's opening brief, and without any other matter appearing thereon. The statement shall be in the briefest and most general terms, without names, dates, amounts or particulars of any kind. The statement in its entirety should not exceed twenty lines, must never exceed one page and must be printed in type at least as large as that used in the main body of the brief. If the respondent does not agree with the appellant's statement, he may frame his own and incorporate it, in like form and content, as the first page of his brief. When a printed brief, petition for hearing in the supreme court, or petition for rehearing in either the supreme court or the district courts of appeal, contains thirty pages or more it must be prefaced with a topical index of its contents and a table of cases and authorities cited showing the pages on which each is cited."

It is new in California, but is patterned after the Pennsylvania rule which requires a statement of the questions involved "in the briefest and most general terms, without names, dates, amounts or particulars of any kind whatsoever," which it is said "should not ordinarily exceed fifteen lines," and must not exceed one page. Between 1911 and 1923 it was said that "it should not ordinarily exceed ten lines," and prior to 1911, not to exceed six or eight.

Discussion of the Rule

A complete discussion of the working of the rule and its enforcement together with examples of badly framed and properly stated questions is contained in an article by Chief Justice von Moschzisker, in 34 Yale Law Journal, p. 287. (Reference should also be made to the article in the State Bar Journal of June, 1932, at p. 132.) The Chief Justice says: "The court had long required a statement of the 'history of the case,' and originally, it was intended that this should show, in narrative form, without unnecessary detail, not only the nature of the controversy and the steps taken in the court below, but also the points to be determined on appeal. Counsel, however, fell into the habit of inserting so many details as to obscure the controlling question; as a result, hope of obtaining this information through the medium of the history of the case was abandoned, and in 1900, new rules were promulgated" including the one now under consideration. He also says: "The intention is that the statement of questions involved shall be framed in such a manner, that by reading it, the court, without being compelled to examine the argument of counsel or any other part of the brief or record, may quickly see the nature of the legal issue, and in a general way, what points it will be called on to decide. As an aid to this end, the latest rule requires appellant to print the statement on the first page of his brief, and to put nothing else thereon."

The rule has been rigidly enforced in that

state, many appeals being dismissed for failure to comply, the court going so far as to say in one case (*Comm. v. Strail,* 220 Pa. 483, 60 Atl. 866) that the penalty may even be imposed "in murder cases." Likewise it has been held that no point not included within the statement will be considered. And by reason of the fact that I know of no California case which has so far interpreted the rule I am going to give an example set forth in the article mentioned, of how an improperly worded statement may be improved. Not sufficiently concise it reads as follows:

"The question involved is, whether the plaintiff, who signed an application for a policy of insurance upon his dwelling house, in the Mutual Life Insurance Company of Annville, Lebanon County Pa., about five o'clock p.m., Saturday, June 10, 1905, and paying simply the application fee of $2.50, and there being no mail from that community by which the said application could be sent to the company for its acceptance or rejection until about eight o'clock a.m. of June 12, 1905, and before the application could be sent the premises for which the application had been made was destroyed by fire, of which the agent who was authorized simply to receive applications for insurance, was duly notified, can recover for the loss? Was there any negligence on the part of the company, or its agent, because the agent did not forward the application, after he had knowledge of the destruction of the premises by fire, before it was possible to have forwarded the application by mail, simply to have the company reject the application *pro forma,* as would bind the company and makes it liable?"

Revised, it would read: "Request for insurance against fire was signed by applicant and insurance company's agent, who accepted application fee. Agent had authority only to receive and not to pass upon applications. Before the request could be mailed to company for approval or rejection, the premises were burned down. On receiving notice of the fire, agent tendered return of the fee and did not forward the application to company. Approval of application was later refused. Was there a contract of insurance on which company is liable?"

This illustration conveys to the mind what is meant by Carol G. Walter in his treatise on Brief Writing and Advocacy when he says: "But under present day conditions, the prime requisite of the advocate is nothing more subtle or profund than the ability to state his case clearly and simply in the fewest possible words; and the inferior quality of most oral arguments is nothing other than a failure to do that thing."

Example of Correct Statements

Perhaps it would not be inappropriate to give two further examples which have received judicial approval. In *American Car and Foundry Co. v. Matzock,* 228 Fed. 179 we read: "Pursuant to a rule of this court which provides that the brief shall contain 'a statement of the question or questions involved which shall be in the briefest and most general terms, without names, dates, amounts or particulars of any kind whatever' counsel have tersely summarized the questions involved as follows:

'(a) Whether, under the undisputed evidence, the court should have held, as a matter of law, that the plaintiff assumed the risk of injury.

'(b) Whether, under the undisputed evidence, the court should have held as a matter of law, that the plaintiff was guilty of contributory negligence.

'(c) Whether, under all the evidence, the court should have directed a verdict for the defendant.'

These questions are based on the refusal of requests to charge, and as the several assignments show that in each of such requests there was a prayer for binding instructions to the jury, it will be seen that all of them finally center in the underlying question raised by the defendant's point:

" 'That under all the law and evidence in the case, the verdict of the jury must be for the defendant.' "

And in *Watson v. Gillespie,* 205 N.Y. App. Div. 613, we have another question framed by counsel and approved by the court. We there read:

"The question presented on this appeal is succinctly stated by the learned counsel for appellants, as follows: 'Whether a current account so intended and so labeled, rendered as a basis of subsequent liquidation by an employee employed by these defendants, can or has in this case by acceptance by the plaintiff to whom it was rendered become an account stated so as to entitle this plaintiff to the credit balance shown in cash, when such effect is contrary to and in derogation of the express terms of a written contract existing between the plaintiff and defendants, and when it has the further effect of crediting plaintiff, who is

entitled under the contract only to net profits, with book profits which to the knowledge of both plaintiff and defendants have been turned into losses by shrinkage in the inventory value of accounts receivable on the basis of which the profits had been computed.'"

Essential Transactions of Parties

It occurs to me that if it be advisable to put in dates and some details that those matters should be incorporated in the statement of the case, which should be as much a part of the brief as formerly, for the purpose of giving to the Appellate Court an exact picture of what took place in the trial court; from what order or judgment the appeal is taken, and the essential transactions of the parties which give rise to the controversy involved in the cause.

There is another paragraph in section 2 of rule VIII which has not been quoted. It reads: "The brief or petition must present each point separately under an appropriate heading, showing the nature of the question to be presented or the point to be made." This paragraph without the words "or petition" has been included in rule VIII since 1928 and has received judicial construction. For the purpose of emphasis I should like to redirect your attention to the words "showing the nature of the question to be presented." In view of the discussion already had, I know of no better way to explain the requirement than to say that the heading is to that subdivision of the brief what the statement of the question is to the entire brief, and if California follows the adjudications of Pennsylvania the question presented by the heading must be included in the statement of the question.

Correct Headings

Ordinarily speaking, questions to be presented in the appellate court are questions of law and therefore in order to show the nature of the question to be presented the heading should be such as to indicate the legal question. Sometimes, of course, the question to be discussed in the subdivision of the brief is whether there is any evidence to support a finding of fact or the verdict of the jury but even here in many instances there is an underlying question which is to be determined in order to decide whether the findings of fact or the verdict of the jury is supported, and it would seem that such underlying question might properly be made use of within the heading or perhaps the heading put in the form of an alternative. Just to indicate how far counsel have sometimes failed to apprehend the purpose or necessity of the rule I quote from the so-called headings in a brief, as follows:

"The Pleadings; The Findings; The Employment; That Hawkins effected an Exchange; That Doolittle had promised to pay Plaintiff $1250; and The Agreement by Appellant." (*Hawkins v. Doolittle*, 113 Cal. App. 619.) Of course it would seem that this is an extreme case. There is no indication whatsoever as to any legal question or any other question to be discussed, and yet in other instances there have been no heading whatsover. (*Withers v. So. Pac. Co.*, 101 Cal. App. 373; *People v. Yaroslawsky*, 110 Cal. App. 175; *Barnes v. Cocke*, 99 Cal. App. 700).

While giving what ought not be done perhaps it is well to give a couple of instances where the headings have been deemed proper. In a case involving the constitutionality of a statute the following headings were used:

1. "If by the Enactment the legislature vested no power in the courts other than to determine the existence of the Facts set forth in the law itself, contingent upon the existence of which the law comes into operation, it does not delegate legislative power to the courts."

2. "The act by granting rights to municipal corporations which are withheld from private corporations, is not thereby made a special law."

In a personal injury action the following headings were used:

1. "The evidence is insufficient to justify the verdict of the jury because the respondent failed to prove a safety appliance defect."

2. "Assuming, but not admitting, that there was a defective coupler constituting a safety appliance defect, this was not the proximate cause of respondent's injuries."

3. "The court committed prejudicial error in instructing the jury on the question of an alleged safety appliance defect."

4. "The court committed prejudicial error by invading the province of the jury in giving an instruction on a question of fact."

5. "The court committed prejudicial error by invading the province of the jury in giving another instruction bearing upon appellant's alleged negligence and the alleged safety appliance defect."

6. "The evidence is insufficient to justify the verdict of the jury because respondent

failed to prove the appellant guilty of any negligence that proximately caused or contributed to his injuries."

7. "Appellant owed respondent no duty to warn him as to the switching movement, for he had full knowledge as to the method of switching and handling engines and cars in the Barstow Yards and of the attending dangers."

8. "The engine crew had no knowledge that respondent was in a place of peril and was oblivious of the danger and consequently was not required to vary the switching practice customarily followed."

9. "There were two methods of doing the work open to respondent—one was safe, the other unsafe—and he chose the latter."

10. "The evidence is insufficient to justify the verdict of the jury because respondent assumed the risks of the dangers attendant upon his work. These dangers were usual, open, obvious and known and appreciated by him."

New Rule V

Section 3 of Rule V also became effective on July 1, 1932, but has already received judicial construction. It reads:

"At any time after the filing of the opening brief of an appellant in a civil action, the respondent may, upon due notice, move for a dismissal of the appeal or an affirmance of the judgment or order on the ground that the appeal was taken for delay only or that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument. A motion to dismiss may be united in the alternative with a motion to affirm. Although the court may, upon consideration of the motion to dismiss or the motion to affirm, refuse to grant the motion, it may, if it concludes that the case is of such a character as not to justify further argument, order the cause transferred to a 'ready for submission docket.' Causes on the 'ready for submission docket' will be submitted and disposed of from time to time as the regular order of business will permit. If the respondent's brief is not on file at the time the motion is heard the service and filing of the notice of motion to dismiss or affirm shall extend the time for filing respondent's brief until the expiration of ten days after decision of the motion, or such further time as the court may allow. The court on its own motion may issue an order to show cause why an appeal from any such judgment or order should not be dismissed or the judgment or order be affirmed on the ground that the appeal is frivolous or otherwise without substantial merit. If a dismissal of the appeal or an affirmance of the judgment be not ordered on the hearing of the order to show cause the case may be transferred to the 'ready for submission docket' and be disposed of in like manner as on a motion to dismiss or affirm."

In *City of L. A. v. The Los Angeles-Inyo Farms Co.*, 70 C.A.D. 862, it is indicated that the motion provided for by this section cannot be made use of for the purpose of effecting an unwarranted advancement of the case.

In the case of *Dalton v. L. A. College of Chiropractic*, 70 C.A.D. 424, the district court of appeal affirmed the judgment under this rule on the ground that "the questions upon which the decision of the cause depends are so unsubstantial as not to need further argument," and that the same was without merit, taking occasion to quote from the state bar journal to which we have already made reference.

May Dismiss for Failure to Comply

It is important to observe the direct connection between section 2 of rule VIII, referring both to the statement of the questions and the headings, and section 3 of rule V. Taken together, they are intended, as is said in the article signed by all members of the judicial counsel of the State of California, "to enable the court to place in a reservoir of cases that may be submitted from time to time, as the opportunity arises, all cases in which the court feels that the appeal was taken for delay or is not meritorious."

To phrase the matter a little bit differently, if the rules are not complied with the cases may be dismissed for failure to comply therewith. If, on the other hand, the rules are efficiently followed the court is able, as is pointed out by Chief Justice von Moschzisker, to perceive at a glance the points for determination and thereby decide whether the appeal is meritorious or unsubstantial and taken solely for the purpose of delay.

With respect to oral argument, I am a firm believer therein, particularly where there has been an opportunity on the part of the justices to acquire some knowledge of the case prior to the argument. I think questions directed to counsel, followed by argument very often serve to clear away confusion and assist in arriving at the definite, underlying and controlling question of the case.

More About Judicial Selections and "A College of Judges"

By Samuel Ross Enfield, of the Los Angeles Bar

A replication to criticism of the study presented by me in the June "Bulletin," entitled: "A College of Judges—Judicial Selection," by Mr. Varnum in the October "Bulletin," is properly a continuation of the study of this difficult and important problem.

The critic in substance favors an elective judiciary; the writer favors an appointive judiciary, for two reasons: In the interest of the administration of justice, and to free the people and the judges from the scandals of elections, especially the "catch as catch can" primary elections.

We have the record of a candidate for judge killing two antagonists immediately before election day, and we also have the record of three judges undergoing a recall campaign, and a group of candidates campaigning for their places before there are any vacancies; seeking as it were, to step into dead men's shoes before the shod feet are cold; carrying on an election to hold on and to replace all at once, like a two ring circus.

We now have the spectacle of certain newspapers and the Bar Association actively supporting a candidate for judge, for reasons which appear good to them, and then we have certain newspapers opposing that candidate because of that newspaper support. A spectacle illustrating the shambles of an election for judges.

What Is the Answer?

Are not these things scandalous? The good book says: "Sirs, what shall I do to be saved?" and gives the answer, but a candidate before the people says: "What shall I do to be a judge?", and what is the answer? Does the candidate for judge educate and fit himself, and then offer himself for judge?

Under the existing system the candidate proceeds to campaign. He plunges into the mire and muck and bog of politics. He is advised that he must go to the "bosses" and deal with the political racketeers. Then follow maneuvers, deals and strategy of political campaigns, combinations, machinations, money, pledges, obligations, not including the ugly word "corruption."

I beg to quote from my previous article:

> **"The Candidate on the Bench,** mark the words, feels a dagger thrust in his bosom at every adverse ruling, order or appointment. There are judges who perform their duty without fear or favor — but their seats tremble beneath them — and candidacies so based meet with little encouragement. The saddest spectacle viewed by public eye is that of an electioneering judge. I dare not use the adjectives that such a spectacle suggests. I dare not. Campaigning in and out of court, appointing gift-giving fiduciaries supposed to be politically powerful, watching their step in ruling upon admission of testimony offered, or objected to, by politically active attorneys, cautious in taking under advisement issues affecting great corporate interests with large voting personnel, trimming in passing on motions for postponements, continuances, new trials, etc., etc. Politics, elections, the necessity for votes, make them so."

What Punishment!

Should a judicial candidacy on or off the bench undergo such *"Peine forte et dure?"* And there can be no greater punishment.

Should the people, confused by charges, claims and the lies of mixed political campaigns, in a veritable Tower of Babel, be made to make their choice of judges out of a jumble of a hundred odd names?

I have had experience and observation, but have never heard a demand for the right to vote for judges, but have been begged and pressed by men and women and groups, clubs and organizations, to tell them who to vote for for judge. Many times I did not know myself and sought the aid of other lawyers.

In a recent address President Crump of the State Bar had this to say about

Oyez! Oyez! Oyez!

The 1932 Xmas Jinks Committee

PRESENTS

"WILD WAVES"

(A Racy Radio Revue)

FEATURING

Well-known Stars of Bench and Bar in the most colossal expose of private scandal ever broadcast. More loud-speakers than a convention and a hundred times funnier.

"Tune in" on the Year's Best Cellar.

THE DATE: SATURDAY, DECEMBER 17, 1932.

THE TIME: 6:30 P.M.

THE PLACE: BILTMORE HOTEL — "SALA DE ORO"

THE "DAMAGE": TWO DOLLARS FOR A BILTMORE DINNER.

More Later!

GEORGE BRESLIN,
General Chairman.

electing judges — and with wonderful effect:

"I have an abiding faith in the intelligent action of the mass of the people, if only they know whom or what they are voting for, but in a county like Los Angeles, having fifty Superior judges, thirty Municipal Court judges, hundreds of would-be judges, and more than a million voters, the popular election of judges is as ridiculous in theory and often as tragic in results, as would be the selection of a physician, architect, or civil engineer by the same method; in fact it is, if possible, worse.

"When a man is elected by the present system he is compelled at frequent intervals to stand for re-election and divert his time from his judicial labors to campaigning. Very few of our judges are of much value to the State for six months or more while so engaged.

"Although a man may have accepted an appointment to the bench at great financial sacrifice, and although he may have so conducted himself as to have proven his outstanding ability, yet he must spend as much as, or more than a year's salary and a year or more of his life in an attempt to retain a job which should be his for the asking.

"In conclusion, I leave this question with you: How long are the people of Los Angeles county going to tolerate this insufferable system of selecting judges."

Grand Jury Report

Also I quote from the Grand Jury of Los Angeles County, report and recommendation of July 15, 1932:

"(E). That the California State Bar, and the various bar associations of the State, endeavor to bring about a more satisfactory method of selecting judges. One of the basic changes in the selection of members of the judiciary should be the elimination of the present system under which the individual candidate, whether an incumbent or otherwise, must create, or have created for him, a political organization exclusively devoted to his election or re-election. This system invites and encourages the intrusion of political considerations into all aspects of the selection and retention of judges, and while the grand jury believes the greater number of judges are not subject to the pernicious influence thus invoked, it believes some workable plan should be devised to relieve candidates for judge from the necessity of engaging in practical politics."

Newspaper Comment

And I quote from the "Los Angeles Times" of July 16, 1932, commenting upon the Grand Jury report:

"'Judges in Politics' might well be selected as the title for the report of the grand jury in the American Mortgage receivership mess, for it must be evident to anyone able to draw inference that a system which results in the appointment of competent receivers will only be installed by a nonpolitical judiciary. The present method of selecting receivers works badly in many instances, as the grand jury declares, but it does so primarily because judges are required to build up political machines if they want to be re-elected. If a judge did not have to consider his own political fortunes, he would have less temptation to take account of anything but merit and fitness in making appointments of any nature."

Surely the logic of facts compels a revision of the present system of electing judges, and that is what I advocate.

The criticism of article in October "Bulletin" of proposal III, that a chief justice in the case of "First expiration" would pluck a "plum" in assigning judges to the judicial council favorable to his own reappointment indicates a careless misreading of the plan. By reading proposal, Art. 6, sec 3, the critic might have noted the provision at the end thereof:

"Provided that the Governor may appoint any justice or judge of said court to any other judicial office without certification."

Under said clause the Governor would appoint a chief justice from among the justices or judges, and the expiring chief justice would have no authority at all. And the proviso was prepared for just such situations. The absurdity of appointing a justice of the high courts from outside the bench is guarded in said proposal—but in case of a vacancy in office of chief justice, or justices, in the high court under the present constitution the Governor may appoint a friend or a fol-

lower from the bushes. There is no check on him.

The criticism of Proposal II, looking to certification to the Governor of qualified lawyers for appointment as judges by the Board of Governors of the State Bar, is a conjuration of the imps of the air, and equally airy and insubstantial.

Judiciary and the Bar

I believe in a self-governing bar. The judiciary and the bar are Siamese twins. Knife them apart and both die. The Bar is the seed of the judiciary, the flower and the ripened grain. The judges are born, have their being, and die within the Bar.

The Board of Governors, under the law, govern admission, practice and expulsion from the Bar, and carrying forward the principle, should be competent to certify the qualifications of a judicial aspirant to the Governor. Such a restriction and limitation on the appointing authority protects the bench from possible political patronage, would guard the Governor against political importunities, and assure the administration of justice. Is not the board of governors, representing each and every member of the State Bar, competent to certify the qualifications of the judicial aspirant?

The Board of Governors are practicing attorneys, and want to appear before capable and impartial judges. The law of selfishness will prevent negligence. There can be no politics, prejudice or bias in reporting qualifications and the record of a candidate.

Ahead of the Times

The proposal of "The College of Judges" has been, like all original ideas of poor, dumb, human beings, much misunderstood and misinterpreted. As one speaker at the Bar Association said: "It is a splendid idea, but it is two hundred years ahead of the times."

In advocating the "College of Judges" it was the purpose of the author to advance a principle in the hope that it would be adopted by the universities of the State, and approved by the Bar as a method and system of providing qualified judges. I believe, from a wide correspondence and discussion of the subject, resulting from publication of plan, and a reprint of parts of same in many publications, that universities in California and other states will found and establish such colleges—as a postgraduate course for lawyers ambitious to educate and qualify themselves for judicial office. I had no hope of its immediate adoption and operation, having some sense of humor and of professional opposition to progress, but projected the plan as a star in the horizon of the future that wiser men than ourselves might behold and follow. The proposal will stand the test of intense examination, and the throwing of toothpick banderillas at its body will not affect it.

The record shows that every judge now on the Superior Court bench was originally appointed by the Governor, and if appointment is not the best method why did the people afterwards elect and approve the appointments?

If mistakes have been made, that is true of all phases of life, and the provisions in proposals for judicial selection, requiring qualification and certification as a limitation on the Governor's appointing power, are planned to protect the public against future mistakes.

I am not ready to concede that the method of judicial selection in different parts of the state of California should vary—that is, to be a sort of Joseph's coat of many colors. The fault of the elective system for judges applies to all parts of the state, whatever smug defenses may be set up as to some localities being above politics. We all know that. The principle of a self-governing Bar should extend service throughout the state, and not stop at the county. The State Bar should advocate a uniform system of judicial selection for the state, based on thorough analysis and mature judgment. If, however, it should be the judgment of the local Bar to try out a county plan, the principle of Bar certification should be maintained.

Young Doctors and Lawyers Meet

When doctors and lawyers get together something happens! That something did occur when the Fellowship Section of the Los Angeles County Medical Association and the Junior Committee of the Los Angeles Bar Association held their second annual meeting at the Roosevelt Hotel on the evening of October 19, with some two hundred fifty aspiring physicians and attorneys in attendance. The occasion was a stag dinner, with Lowell "Buzz" Matthay — attorney and chairman of the Junior Committee — presiding and Doctor Howard L. Updegraff, acting as toastmaster. Lest we forget, the idea of such a joint meeting originated a year ago, with William "Bill" Rains, then, as now, active in Junior Committee affairs. Largely through his efforts, the first joint meeting was held at the California Club last November.

To get back to the meeting, the array of speakers resembled the current edition of Who's Who. Judge Clair S. Tappaan wrote out a beautiful speech, discarded it when he got to the meeting, and delivered a better one impromptu, embellishing his talk with excerpts and incidents taken from the early English Reports. His comments on the relationship of medicine to law during the formative period of our modern concept of medical jurisprudence were interesting as well as instructive. Doctor Paul Bowers told those present how lawyers should approach the examination of expert medical witnesses. Attorney George L. Greer retaliated by telling just what he thought of most so-called expert medical testimony, and related the circumstances surrounding his famous "Coca Cola-itis" case. Doctor Harlan Shoemaker, who has practiced extensively in industrial accident cases, discussed various phases of the law pertaining thereto, while Douglas A. Campbell, referee in industrial accident matters, delivered an extremely instructive talk upon the medical phases of the Workman's Compensation Act. Doctor Albert Soiland, who was one of the first to bring the X-ray into extensive use and who was the first witness in California to bring X-ray plates and photographs into court for use in evidence, recounted some of his early experiences as an X-ray expert in court proceedings and discussed its extensive use at the present time.

The honored sponsors of the Junior Committee, the Honorable B. Rey Schauer, Judge of the Superior Court, Hubert T. Morrow and Joe Crider, Jr., were conspicuously present. Judge Schauer made one of the hits of the evening when he recited a poem having to do with the difficulties experienced by a lawyear who had gone to heaven, with all other lawyers, in relieving a doctor from eternal fire and the hands of the devil by means of a writ of habeas corpus. Mr. Morrow, who takes an extensive interest in Junior Committee affairs and who is looked upon as the father of the organization, extended his best wishes. Mr. Robert P. Jennings, president of the Los Angeles Bar Association, and Doctor Llewellyn R. Lewis, president of the Fellowship Section, followed Mr. Morrow's example and took a bow.

An account of the meeting would not be complete without mention of the entertainment produced by Jack Hardy, entertainment chairman, and staged by Thurman Davis. A revue from the Lincoln Theatre was present en masse. Dave Dare, English baritone star of the "Rose of Flanders," sang several numbers, and Jimmy Chubb, with the able assistance of a blonde and a brunette, gave some songs and dancing numbers. Taken all in all, the affair was a "natural," as advertised. May the doctors and lawyers meet again!

The Judiciary and the Press

JOURNALIST-LAWYER DECLARES POLITICS IS CURSE OF AMERICAN JUDICIAL SYSTEM. NO IMPROVEMENT POSSIBLE UNTIL ADMINISTRATION OF LAW DELIVERED FROM POLITICAL INFLUENCE

STUART H. PERRY, newspaperman, newspaper editor and lawyer, delivered an address before the American Bar Association at its recent Washington convention which created somewhat of a sensation. His subject, "The Judiciary and The Press," treated the improvement of our Judical System as a public question with which the bar and the press are especially concerned, though from different standpoints. His analysis of the subject, and particularly of the evils of politics in our system of law enforcement, will be read by the members of the Bar and the Judiciary with interest. **The Bulletin** prints excerpts from the address below.

The importance of the relations between the judiciary and the press is due to something more than the mere contiguity of their respective fields or the desirability of a proper attitude of two professions toward each other. In the earth's crust the fault lines where different formations abut "uncomfortably," as the gelogists say, are often weak spots where internal fires break through the surface; and similarly the line of contact between newspapers and the machinery of the law is one where not only the evils of both come to light but where certain sinister forces of deeper origin are in continual eruption.

I will pass over certain shortcomings of the press which are purely its own and for which it alone is responsible—such as inaccuracy, bad taste and unwholesome news—and take up two outstanding evils that are much more serious, and in which the press and the judiciary are jointly involved. These are, first, the interference of the press with the administration of criminal justice, often referred to as "trial by newspaper," and second, the traffic between officers of the law and the press whereby information is exchanged for publicity.

Curse of Politics

Both these evils derive from the same source, which leads me to state at once my main thesis: that politics is the curse of our entire judicial system, and that no radical and durable improvement will be possible until the administration of law is effectively delivered from political influence.

The excessive crime ratio and the inefficiency of law enforcement in this country, as compared with other English-speaking countries and the best governed countries of Europe, are notorious and undisputed facts. In seeking the explanations for such a contrast, many differences in conditions have been pointed out, and often greatly over-emphasized. Few of these conditions are unique and none are convincing. We have congested areas, great cities, slums and underworlds; but so have England and Europe. We have racial mixtures in many regions, but our crime record is also very bad in regions where there is practically no foreign admixture. Immigrants become much more lawless here than they were in the countries of their origin; yet that is not true in Canada, although in some provinces there is a large alien element. It is continually emphasized that this is a new country; but Canada, South Africa and Australia are still newer, and their record is much better than ours.

Law Enforcement is Political

By process of elimination we finally arrive at one difference which is unique, and so profound in character that it can logically be accepted as the dominant reason for the unsatisfactory conditions in this country. I refer to the fact that in most of the states the entire machinery of law enforcement is political. It is born of politics, dominated by politics, saturated with politics. In that respect this country stands in contrast with all other progressive nations. The greatest contrast of all is with the other English-

speaking countries where in all other respects we find the greatest similarity in legal, social and political conditions. It is sound deductive reasoning that the exceptional results should be attributed to this exceptional cause, and that deduction is fully sustained by all the facts of observation and experience.

To the influence of politics can confidently be ascribed most of the chronic evils in our system of law enforcement, and certainly the egregrious conditions in our large cities where those evils attain their maximum. In the long category might be mentioned the corruption of police methods; the degeneration of trial by jury; the abuse of such procedural steps as bail, continuances, dismissal and habeas corpus; the perversion of probation, suspended sentences and pardons; the selection of unfit judges, prosecutors and police officers; and finally all the mischief that flows from the relations of those officers with the press. Some of these evils might occasionally arise under a non-political regime of law enforcement, but they would be sporadic and unrelated; under the existing regime they are endemic, perpetual and inherent.

A conspicuous dark flower of the whole system is the criminal lawyer. But he is a flower, not a root; he is not a source or a cause, but wholly a product of lax substantive law and procedural abuses, practically all of which are traceable directly to the influence of politics in the processes of law enforcement.

Against this background of the general conditions that dominate the administration of law in state courts, let us consider the two specific outstanding evils to which I first referred.

Trial By Newspaper

Trial by newspaper is unfortunately too familiar to need any extended description. That loose but convenient term covers the exploitation of crime news by the press from the sole standpoint of reader interest and without regard to the effect upon the administration of justice. The subject matter of such publicity includes evidence, often incompetent or false; interviews expressing theories, suspicions and opinions, descriptive matter appealing to emotion or curiosity; all manner of claims and assertions from defendants, witnesses, attorneys and police; and finally the reporting of the trial itself in a sensational and often prejudicial manner. The inevitable effect is to make satisfactory jurors harder to obtain, to influence verdicts, and often to influence the attitude of judges, through the operation of popular sympathy or prejudice.

Although this evil has been continual and widespread in America for a century, and its sinister effects have been exposed by countless critics, there are still optimists who argue that it will cure itself. Journalistic standards in general have greatly improved which leads them to hope that "trial by newspaper" as well as other faults in the handling of court news, will gradually disappear. That hope is illusory. They will perhaps diminish to a certain point, but beyond that point the reform will never go spontaneously because there will always be a large body of readers who will "eat up" such news matter, and therefore there will always be publishers to supply that demand. Such publishers cater to those who read and like their papers; they care nothing for the opinions of those who do not read them. Unscrupulous persons can never be expected to give up a lucrative trade in deference to mere disapproval not enforced by legal sanctions.

Unrestrained Journalistic Methods

That type of journalism also has apologists who argue that great benefits accrue to the public from such unrestrained journalistic methods. The benefits usually referred to are the cooperation of the press in the conviction of offenders, and the influence of publicity in forcing action by reluctant public officials. Indeed, the supposed invaluable aid of the press in helping the arrest and conviction of criminals has been reiterated so often that it has been widely accepted by the uncritical. Even some of the sharpest critics of the yellow press weakly admit it.

But, generally speaking, it is not true. Occasionally news stories lead to the discovery of fugitive criminals or valuable witnesses, but much more often the efforts of the prosecution are impaired or thwarted by premature and haphazard publicity. If such aid is really essential, it is hard to understand how the British authorities can do without it and still achieve much better results than we. Press cooperation often would be valuable if it were confined to such matters as competent and disinterested officials wished to have made public; but there is

no reason to fear that such limited co-operation would not be fully given, even if the press were restrained from unlimited voluntary exploitation of criminal news.

The argument that newspapers force action on the part of police and prosecutors is essentially a plea in confession and avoidance—one that confesses much and avoids little. Occasionally they do so—sometimes with justifiable motives and salutary results; sometimes, as in the Hall-Mills case, with very different motives and results. In any view the instances are exceptional, and such action would never be necessary or even desirable unless courts and prosecutors were inefficient, incompetent, or muzzled by politics. The public interest never should require a private agency operated for profit to take over the functions of detectives, police or prosecutors, unless political influence has to be beaten down or unless politics has thrust incompetent men into those official positions.

No Extenuation

In my judgment no valid case can be made out in defense or in extenuation of trial by newspaper. It is contrary to all pronouncements of journalistic ethics and it is condemned with practical unanimity by competent and disinterested critics of all kinds. The help of the press is at best irregular and uncertain. Such help follows no definite methods; it may be expert or clumsy; it may be governed by good or bad motives. To argue that the law cannot be properly enforced without such help is to admit the impotence and the breakdown of our legal machinery.

Trial by newspaper is specifically a fault of the press. The newspapers are the visible target for the charge of interfering with justice—a charge which can neither be refuted nor evaded. But that fault of the press is inextricably entwined with another in which the judiciary and the press are equally active and equally culpable. I refer to the exchange of official information for publicity. Newspapers, especially of the sensational type, want much more than mere facts of record. They want "inside dope," advance tips, sidelights, discussion, opinion. Such information is a valuable commodity to them. Officers of the law — including judges, prosecutors, lawyers, police and sheriffs—have that commodity to sell, in return for the resulting publicity which is equally valuable to them.

Publicity Seeking Officials

This exchange is so potent in its effects that at times one gets an impression that the newspapers dominate the judiciary. But if that appears to be true—and if in some cases it really is true—it is not because the newspapers are strong but because the courts are weak. The British press is just as strong as the American. The circulation of its great newspapers is as large; its leading publishers are personally as powerful as our leading publishers; it caters to the same varieties of human nature, and some British publishers feel the same impulse to exploit crime and court news for its full news value. Yet "trial by newspaper" is unknown, because the courts are able to protect their operation against outside interference.

It is an error to think that the publicity-seeking official thus serves the newspaper primarily in order to win its support at election time, or because of fear of editorial opposition. What he more often seeks is a continual patter of publicity, year in and year out. He wants to be mentioned, quoted, pictured—just like a movie star. If he gets that, the election will take care of itself. Newspapers can keep a demagogue judge in office without ever mentioning him in their editorial columns or ever expressing an opinion in his favor. It pays to advertise.

Remedial Action

Remedial action against trial by newspaper and the exchange of legal news for publicity must take one of two courses. One is through moral influence self-applied by the press and the bar, or brought to bear upon them. The other is positive regulatory action.

Many remedies of the former type have been suggested, based on the idea either of the improvement of the press, the influence of an improved bar on courts and prosecutors, or the influence of public opinion. All these in my opinion are ineffective, and open to the objections that always apply to the use of palliatives where radical remedies are indicated.

As to the self-improvement of the press, I do not think it can supply the remedy. That statement is not an admission that the press is wholly unregenerate; it merely recognizes the peculiar condition in the newspaper world.

Improvement of the Bar

The possibilities through improvement of the bar, on the other hand, are more encouraging. Unlike journalism, the law is a closed field of activity, protected by certain standards of entrance. Its members perform services that demand identical preparation, they follow a uniform practice, and they should observe a uniform code of conduct. The practice of law, furthermore, is charged with public interest to such an extent that lawyers have an official status and in a number of states the bar has been given important corporate powers, including that of discipline. The bar, heretofore, can be made fully self-regulating through a proper integration.

There are strong reasons for thus strengthening the bar; but in my opinion it would be a mistake to expect that the bar, however much improved, could put an end to the exchange of information for publicity. In an unintegrated and unorganized state, it can and will do absolutely nothing.

Traffic in Official News

For my part I can form no mental picture of any bar association of the ordinary type disciplining lawyers in any manner. It is almost impossible to get action from them even when gross and long-continued misconduct demands the commencement of disbarment proceedings. As for preventing judges and prosecutors from trading news for political advertising, it would be about as easy as preventing a yellow journalist from printing a yellow journal. In each case the trade thrives because it is highly profitable.

With an integrated bar, exercising positive control over standards of admission and conduct, much could be accomplished in holding lawyers to ethical conduct. But even that would not be sufficient to stop the traffic in official news. The methods of that traffic are too subtle and its motives are too powerful.

There remains a third channel through which moral influences might be exerted —through public opinion set in motion by the bar and the press acting alone or together.

Here it is to be noted that the bar is not, like the medical profession, dependent wholly upon other agencies for publicity. If it does not have a continual audience, like the ministry, it has innumerable occasional opportunities to address the public directly. Lawyers everywhere are prominent in their communities, they are often leaders, and their ability to speak effectively adds to their influence upon public opinon. This great asset of the profession should be utilized to its fullest extent to give the public sound information, to enlist its interest in the improvement of the bench and bar.

Most of the suggestions regarding public opinion, however, contemplate press publicity, either spontaneous or inspired by the bar. Without in any wise belittling the general influence of such propaganda, I have little faith that the operation of public opinion of itself will accomplish any great improvement in advance of positive measures.

Influence of Press

The influence of the press on the election of good judges is always invoked, greatly extolled, but often greatly exaggerated, as the elections in many cities demonstrate continually. To be really effective a newspaper not only must point out the merits of the good candidates but also warn the public against the faults of the bad ones. To do the latter is to invite libel suits, loss of readers and personal enmities. In a judicial election, therefore, the newspaper at most cannot be expected to do more than to indorse this or that candidate. The editor often finds that such recommendations have less effect than he expected. Unless the case is grossly flagrant, we cannot expect the average editor to attack the conduct or qualifications of a judicial candidate. Still less can we expect the newspapers, even the best ones, to criticise and expose a bad judge. To attack a judge is both disagreeable and unprofitable. It may involve errors, failure and loss of prestige. It is certain to involve lasting enmities and perhaps advantage to competing newspapers.

The editor who attacks a judge always runs some risk of punishment for contempt through his own misunderstanding of the proper legal limits of such criticism. Worse than that, even if his criticism is fully justified and legally proper, he still may be held in contempt through the error of malice of the offended judge —and the more fully justified his criticisms are, the greater the chance of the judge misusing his power of contempt.

Jurisdictional Boundaries of the Industrial Accident Commission

The recent discussion of a possible separate tribunal for automotive litigation gives point to an analysis of the jurisdictional scope of an existing "legislative court" — the Industrial Accident Commission, which occupies the analogous field of workmen's compensation.

The Industrial Accident Commission is created under the authorization of section 17½ and 21 of Article XX of the State constitution. The jurisdictional and procedural structure erected upon this foundation in the Compensation Act is purely legislative as distinguished from constitutional as in the case of courts of general jurisdiction.

Roughly speaking, there are two main divisions of the jurisdiction of the Commission: (1) those subjects over which primary jurisdiction exists; and (2) those of incidental jurisdiction.

I.

The primary jurisdiction of the Commission, by the constitutional authorization, is limited to controversies between employer and employee.[1] This is the requisite for primary jurisdiction and the sole foundation for incidental action.[2] Where the employer has insured the payment of compensation the jurisdiction of the Commission is exclusive.[3] An uninsured employer is subject to suit both before the Commission under the Compensation Act and in the general courts upon the bare doctrine of negligence,[4] unmitigated by the common law defences[5] and with an adverse but rebuttable presumption against him, that such injury was due to his negligence.[6] There is dual jurisdiction in such an event undisturbed by the plea of *Res Adjudicata*.[4]

So far as the Compensation Act is concerned in all agency situations, there is present either an employer-employee relation or that of principal and independent contractor. Due to the breadth of the statutory definitions,[7] there are no other alternatives.[8] While the Compensation Act contains its own definitions of employee, employer and independent contractor,[7] due to constitutional limitations, the conventional or common law scope of these terms is neither enlarged nor narrowed.[9] The sole exception to this statement appears in the case of a working member of a co-partnership who is receiving wages irrespective of a share in the profits. Such a person is by express definition an "employee" of the co-partnership.[10]

As a logical corollary of the constitutional requirement that the employer-employee relation shall exist between the parties to the controversy, it follows that where the true relation be that of independent contractor and principal, the Commission is without jurisdiction.[11] Nor may the Commission constitutionally take jurisdiction over claims by the State, for payment into the Subsequent Injuries Fund, against an employer in whose service an employee without dependents was killed, since the controversy is between the State and an employer, not an employee and employer.[12] The Commission has no jurisdiction over claims between the doctor and the insurance carrier, where the employer and employee are not parties to the proceedings.[13]

Not all persons within the primary jurisdictional group are under the Compensation Act. A clear intention is disclosed to exclude those whose employments are agrarian and personal from the Compensation obligation, and to limit its application to industrial pursuits.[14] Thus household domestic servants;[14] those whose employment is both

1. *Connally v. Ind. Acc. Comm.*, 173 Cal. 405; 160 Pac. 239; 3 Cal. I.A.C. 439 (1916).
2. *Pac. Employers Ins. Co. v. Ind. Acc. Comm.*, 212 Cal. 139; 298 Pac. 23 (1931).
3. *Pecor v. Norton-Lilly Co.*, 111 Cal. App. 241; 295 Pac. 582 (1931).
4. *Marshall v. Foote*, 81 Cal. App. 98; 252 Pac. 1075; 14 Cal. I.A.C. 309 (1927).
5. *Soria v. Cowell, etc., Co.*, 99 Cal. App. 108; 277 Pac. 1061; 16 Cal. I.A.C. 109 (1929).
6. *Peters v. California, etc., Assn.*, 116 Cal. App. 143; 2 P. (2d) 439 (1931).
7. Secs. 7, 8(a) & (b), Chap. 586, Laws of 1917 as amended, pp. 12-3, Comp. Act.
8. *Holleman v. Taylor*, 200 N.C. 618; 158 S.E. 88 (1931).
9. *Flickenger v. Ind. Acc. Comm.*, 181 Cal. 425; 184 Pac. 851; 6 Cal. I.A.C. 11 and 169 (1919).
10. *Johnson v. Ind. Acc. Comm.*, 198 Cal. 234; 244 Pac. 321; 13 Cal. I.A.C. 169 (1926).
11. *Archbishop v. Ind. Acc. Comm.*, 194 Cal. 660; 230 Pac. 1; 11 Cal. I.A.C. 285 (1924).
12. *Com'l Cas. Co. v. Ind. Acc. Comm.*, 211 Cal. 210; 295 Pac. 11, (1931).
13. *Pac. Employers' Ins. Co. v. Ind. Acc. Comm.*, 212 Cal. 139; 298 Pac. 23 (1931).
14. *Lacoe v. Ind. Acc. Comm.*, 211 Cal. 82; 293 Pac. 669 (1930).

casual and not in the regular course of the business, profession, trade or occupation of the employer;[15] those engaged in selling any newspaper, magazine or periodical directly to the public where the title thereto has passed to such seller;[16] those employed in farm labor where the employer has not taken out compensation insurance; filed an election to be bound by the Act; or his prior annual payroll did not exceed $500.00[17] are not within the terms of the Act, notwithstanding the existence of the employer-employee relation.[18] Additional limitations upon the scope of the Act arise from the superior constitutional jurisdiction of Federal legislation in the field of interstate[19] and maritime commerce.[20]

Not every activity in interstate commerce is excluded from the California Act.[21] The Federal constitutional field is only partially preempted by the Congress by the Federal Employers' Liability Act which is confined to common carriers by rail engaged in interstate commerce,[22] when both the employer and employee are engaged in interstate transportation[23] at the time of injury or in work so closely related thereto as to be a part thereof, the State Act may not be applied.[23]

In the case of maritime injuries, the Congress has again exercised its superior constitutional power. The liability of the ship or owner to the injured master or seaman is governed by the Jones' Act.[24] The compensation rights of injured longshoremen and harbor workers are determined by the Longshoremen's & Harborworkers' Compensation Act[25] when the State Act does not "validly provide compensation benefits."[26] The latter Act by its express terms does not

15. *Blood v. Ind. Acc. Comm.*, 30 Cal. App. 274; 157 Pac. 1140, 4 Cal. I.A.C. 157 (1917).
16. *N. Y. Indem. Co. v. Ind. Acc. Comm.*, 217 Cal. 43; 1 P. (2d) 12, (1931).
17. Chap. 834, Laws of 1927, as amended by Chap. 955, Laws of 1931, p. 81 Comp, Act.
18. Sec 8(a), p. 13, Comp. Act.
19. *Boston & M.R.R. v. Armburg*, 285 U.S. 234; 52 Sup. Ct. 336; 76 L. Ed. 431 (1932).
20. *S. Pac. Co. v. Jensen*, 244 U.S. 205; 37 Sup. Ct. 524; 61 L. Ed. 1086; L.R.A. 1918C 451; Ann. Cas. 1917E 900 (1917).
21. *Chicago & N.W.R.R. v. Bolle*, 284 U.S. 74; 52 Sup. Ct. 59; 76 L. Ed. 90 (1931).
22. Second Employers' Liab. Cases, 223 U.S. 1; 32 Sup. Ct. 169; 56 L. Ed. 327, 38 L.R.A. (N.S.) 44, 1 N.C.C.A. 675 (1912).
23. *Shanks v. D.L.& W.R.R.*, 239 U.S. 556; 36 Sup. Ct. 188; 60 L. Ed. 436; L.R.A. 1916C 797 (1916).
24. 46 U.S.C.A. Sec. 688.
25. 33 U.S.C.A. Secs. 900-944.
26. 33 U.S.C.A. Sec. 903(a).

seek to exclusively occupy the field, but merely has application in those situations not validly covered by a State Act, or where there is no state compensation act.[27]

It must be noted that labor or employment involved in the construction of an instrumentality subsequently to be used in an excluded occupation is not itself excluded. The constitutional limitations do not attach until such instrumentalities have been completed and *dedicated* to actual service within the excluded activity. Their use but not their construction is in the excluded occupation. This is true in the case of farm,[28] interstate[29] or maritime equipment.[30]

While the test for tort jurisdiction in admiralty is situs or place of the completed wrong,[32] and for contract is the nature of the subject matter,[33] the fact that the injury may have occurred upon navigable waters of the United States and in the performance of a maritime contract is not necessarily conclusive of the jurisdiction. If the activity in the course of which the injury occurs be of mere local concern and of such nature that the State Act will not interfere with the characteristic uniformity of the law maritime in its national and international application, the state law may apply.[34] The final test thus is whether the activity at the time of injury be so closely related to navigation and commerce as to be a part thereof.[31] If so, the admiralty law governs.[31]

Not every injury which happens in the service of an insured employer is subject to the jurisdiction of the Commission. In order to be compensable, and hence within the terms of the Compensation Act the injury must be sustained by the employee while performing some duty called for by his contract of hire or reasonably incidental thereto.[35] The injury must both arise out of and in the course of a service called for by the contract of hire or be reasonably incidental thereto.[35]

We are all familiar with the conventional limitations of tort jurisdiction to incidents occurring within the territorial limits of the State. Compensation litigation is founded upon either injuries occurring within the territorial limits of the State or outside its borders but in the course of the performance of a contract entered into within the State of California.[36] This extra-territorial jurisdiction is a unique characteristic of Compensation Acts generally.

II.

The supplemental or incidental jurisdiction of the Commission is unusual in that there is possessed a continuing jurisdiction over decisions for a period of 245 weeks from the date of injury.[37] In other words, the doctrine of *Res Adjudicata* does not apply until after 245 weeks from the date of injury.[37] The Commission may alter, rescind or amend any prior order because of any mistake of law or of fact involved in the earlier decision,[37] upon a showing of "good cause" to justify this reconsideration,[38] such as changes in the employee's physical condition.[39]

Compensation indemnity whether for disability or death is designed for current support and is peculiarly protected from all levy and assignment.[40] Certain expenses closely related to the daily life and well being of the injured and his family which were incurred in connection with his injury or its after results may be presented to the Commission for approval and become liens upon the indemnity to be paid.[41]

Included in those matters authorizing a

27. *Taylor v. Lawson*, 60 F. (2d) 165 (D.C.E.D. S.C. 1932); *Cont. Cas. Co. v. Lawson*, No. 1077-M-Eq. (D.C.S.D. Fla. 1932) Not yet reported.
28. *Miller & Lux, Inc. v. Ind. Acc. Comm.*, 32 Cal. App. 250; 162 Pac. 651; 3 Cal. I.A.C. 495 (1916).
29. *Pederson v. D.L.&W.R.R.*, 229 U.S. 146; 33 Sup. Ct. 648; 57 L. Ed. 1125; Ann. Cas. 1914C 153; 3 N.C.C.A. 779 (1912).
30. *Grant-Smith Porter Ship Co. v. Rhode*, 257 U.S. 469; 42 Sup. Ct. 157; 66 L. Ed. 321; 25 A.L.R. 1008; 9 Cal. I.A.C. 1 (1922).
31. *London Guar. etc., Co. v. Ind. Acc. Comm.*, 279 U.S. 109; 49 Sup. Ct. 296; 73 L. Ed. 632 (1929).
32. The Strabo, 98 Fed. 998 (D.C.E.D.N.Y. 1898).
33. *Atl. Transp. Co. v. Imbrovek*, 234 U.S. 52; 34 Sup. Ct. 733; 58 L. Ed. 1208; 51 L.R.A. (N.S.) 1157 (1913).
34. *Millers' Indem. etc., Exch. v. Braud*, 257 U.S. 469; 46 Sup. Ct. 192 & 194; 70 L. Ed. 288 (1926).
35. *Cal. Cas. etc., Co. v. Ind. Acc. Comm.*, 190 Cal. 433; 213 Pac. 257; 10 Cal. I.A.C. 257 (1923).
36. *Quong Ham Wah Co. v. Ind. Acc. Comm.*, 184 Cal. 26; 192 Pac. 1021; 11 A.L.R. 1190; 7 Cal. I.A.C. 163 (1920).
37. *Bartlett Hayward Co. v. Ind. Acc. Comm.*, 203 Cal. 522; 265 Pac. 195; 15 Cal. I.A.C. 115 (1928).
38. *Ingram v. Ind. Acc. Comm.*, 208 Cal. 633; 284 Pac. 212, (1930).
39. *Miller Creamery Co. v. Ind. Acc. Comm.*, 66 Cal. App. 404; 226 Pac. 402; 11 Cal. I.A.C. 221 (1924).
40. Sec. 24, p. 30, Comp. Act.
41. Sec. 24(b), p. 30, Comp. Act.

lien, are legal services in connection with compensation litigation either before the Commission or the Courts. Any fee agreement of the attorney in excess of a reasonable amount is not legal, valid or binding. The attorney is entitled to a hearing before the Commission, if requested, and opportunity to establish the reasonable value of his services.[42] While the Commission has special jurisdiction to disbar either lay persons or attorneys at law from practice before it for improper fee agreements, the usual practice is to permit the matters to go before the disciplinary committees of the State Bar.[44]

A stormy and interesting division of the incidental jurisdiction is represented by controversies over medical bills. There is no question of the jurisdiction of the Commission over controversies between employees and their employers or the latter's insurance carriers over re-imbursement for medical expense incurred.[45] The Commission's right to determine the cause is also clear when the doctor or institution seeks a lien against the indemnity payable to the employee for treatment rendered to the latter or his family subsequent to the injury.[46] The Act purports to vest the Commission with jurisdiction over claims between the doctor and the employer or the latter's insurance carrier "unless an express agreement shall have been made between the persons or institutions rendering such treatment and the employer or insurance carrier fixing the amount to be paid for the services."[47] This grant has been declared ineffectual where the controversy is not incidental to litigation between employer and employee.[48] It would seem to follow that the jurisdiction of the Commission in controversies over medical fees would only attach when the employee is personally liable therefor and seeks to be reimbursed by the employer. In this field, the matter still needs final judicial determination.

As a logical concomitant of the inability of the injured or of his dependents to assign their right to compensation, is their inability to compromise and release a compensation liability without the approval of the Commission.[49] Because of the subrogation feature of the Act,[50] and the resulting right to compensation credit because of the third party recovery, an incidental feature of Commission jurisdiction is the necessity for approving such third party releases and granting compensation credit.[51]

In view of the underlying philosophies of Compensation, weekly payments are contemplated and are the general rule. When the best interests of the persons entitled thereto so require, the commission in its sound discretion may order payment in a lump sum discounted to the present value of such payments.[52]

Insurance, under permission to self-insure or by compensation policy, is compulsory under the terms of the Act.[53] It is required that the insurance carrier become primarily liable and it is, therefore, both a proper and a necessary party in the compensation litigation.[54] The Commission, as a necessary incident to its primary jurisdiction, has power to hear and determine all questions of law and fact upon which the liability of the insurance carrier depends, including those relating to the validity of the policy and alleged fraud in its procurement.[55] The same is true in respect to controversies involving the qualifying bond of self-insured employers.[56]

It is the power and duty of the Commission to determine the fact of both incompetency and minority.[57] It possesses concurrent jurisdiction with the Superior Court to appoint a guardian ad litem and trustee to represent a compensation beneficiary.[58] Even in those cases in which the power of appointment has been exhausted by exercise thereof by the Superior Court, the guardian must account for compensation funds, not

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42. *Schilling v. Ind. Acc. Comm.*, 47 Cal. App. 190; 190 Pac. 373; 7 Cal. I.A.C. 55 (1920).
43. Sec. 24(d), p. 31, Comp. Act.
44. In Re Goldstone, 83 Cal. Dec. 28, ... Cal. ....., ... P. (2d) ..... (1931).
45. Sec. 9(a), p. 14, Comp. Act.
46. Sec. 24(b), 2 & 3, p. 31, Comp. Act.
47. Sec. 17(c), p. 25, Comp. Act.
48. *Pac. Employers' Ins. Co. v. Ind. Acc. Comm.*, 212 Cal. 139; 298 Pac. 23 (1931).
49. *Mass. Bonding Co. v. Ind. Acc. Comm.*, 176 Cal. 488; 168 Pac. 1051; 4 Cal. I.A.C. 336 (1917).
50. Sec. 26, p. 32, Comp. Act.
51. *Papineau v. Ind. Acc. Comm.*, 45 Cal. App. 181; 187 Pac. 108; 6 Cal. I.A.C. 246 (1919).
52. *County of L. A. v. Ind. Acc. Comm.*, 76 Cal. App. 639; 245 Pac. 796; 12 Cal. I.A.C. 171 (1925).
53. Sec. 29(a), p. 35, Comp. Act.
54. Sec. 30, p. 37, Comp Act.
55. *Gen'l Acc. etc., Co. v. Ind. Acc. Comm.*, 196 Cal. 179; 237 Pac. 33; 13 Cal. I.A.C. 152 (1926).
56. *Hartford Acc. etc., Co. v. Ind. Acc. Comm.*, 84 Cal. Dec. 62, ... Cal. .....; 10 P. (2d) 1035 (1932).
57. Sec. 11(d), p. 21, Comp. Act.

The Uniform State Aeronautical Code

By Warren Jefferson Davis, of the Los Angeles Bar, Commissioner on Uniform State Laws for California

Coordinated action between the Federal Government and the individual States is necessary to bring about regulation of aircraft in operation. Neither the State nor the Federal Government, acting alone, can cope properly with the problems arising every day.

In 1929, at a meeting of the American Bar Association, held in Memphis, Tennessee, a resolution was passed giving the Association's Committee on Aeronautical Law full power to prepare a preliminary draft of a Uniform State Aeronautical Code. Under the procedure of the American Bar Association the matter was referred to the Commissioners on Uniform State Laws at the Annual Conference of the Commissioners on Uniform State Laws held at Washington, D. C., just prior to the 1932 Annual Meeting of the American Bar Association also held at Washington, D. C.

The proposed drafts of the Uniform Law will be studied by the Commissioners and reported to the Conference at its next annual meeting. It is thought that the Commissioners on Uniform State Laws can render a very distinct service to the States by incorporating in a single Code, the basic law relative to aeronautical matters that a State should have. Such a Code should tie together the loose ends of regulatory and non-regulatory legislation, and, at the same time, use that part of the aeronautical law which was enacted by many States prior to the passage of the Air Commerce Act of 1926, some of the provisions of which had even then become obsolete. An examination of conflict in the State Aeronautical Law can be found in the definition of terms contained in the Uniform State Law for Aeronautics, which was proposed prior to the Air Commerce Act of 1926. Not only were the terms in conflict, but basic declarations in the law had been superseded by the Federal law, and yet the original Uniform State Law for Aeronautics was being referred to as the Uniform State Law, and was finding its way into the statutes of various States. There were other vital suggestions which it was thought would be included in a Uniform State Aeronautical Code, in order that such a code would keep abreast of aeronautics as it has developed.

Regulatory Legislation

In the field of Regulatory Legislation, we had the Uniform State Air Licensing Act, which met not only with the approval of the American Bar Association, but with the approval of the Commissioners on Uniform State Laws. It was intended that the proposed Uniform State Aeronautical Code should embody the principles of the Uniform State Air Licensing Act, and the principles of the Uniform State Law for Aeronautics, together with whatever other matters may be considered germane to such a code.

With this background of legislation before us, I, for one, feel that the first tentative draft of the Uniform Aeronautical Code as suggested by the American Bar Association's Committee on Aeronautical Law, falls short of meeting the purposes for which it was intended. Paragraph 6,* covering "Lawfulness of Flight" is very well worded and meets the objections which were raised with regard to the original statement in the Uniform State Law for Aeronautics with regard to ownership of air space. In substituting the proposed provisions, making it mandatory upon the States to require a Federal license, we are now asked to repudiate the optional provisions which might in some States be unconstitutional. The main objection, however, is that Section

*Section 6. **Lawfulness of Flight.** Passage in aircraft over the lands and waters of this state is lawful unless in violation of the air traffic rules or minimum safe altitudes of flight as promulgated by the State Aeronautical Commission (or state administering officer), or unless so conducted as to constitute a nuisance or as to interfere with the then existing use to which the land or water, or space over the land or water, is put by the owner or occupant thereof, or unless so conducted as to reduce the value of such use, or unless so conducted as to be unreasonably dangerous to persons or property on the land or water beneath.

8,** covering "Liability to Passengers" is defectively worded, and does not conform to a decision of the Massachusetts Supreme Court for instance, which differentiates between the liability of aircraft carriers and carriers by land or water, *Wilson v. Colonial Air Transport, Inc.*, 180 N.E. 212. This question of liability to passengers cannot adequately be discussed in a short space, when the Supreme Courts of at least two or more States have been considering the same question for a number of years, and during this year have reached diametrically opposite conclusions, Calif: *Smith v. O'Donnell,* 84 Cal. Dec. 6; Mass.: (*Supra*).

Problems for Solution

As I see the general situation, there are two large problems for solution:

1. The practical problem is how to obtain uniformity of State air legislation. The viewpoint of the Department of Commerce must be centered on this phase of the question and its activities can properly be directed towards obtaining uniformity of State air legislation to supplement the provisions of the Federal Air Commerce Act.

2. The legal problem is how to coordinate the control vested in the States over air commerce with the control vested in the United States Government over interstate commerce. This legal problem is largely a matter in which the American Bar Association and the Commissioners on Uniform State Laws can act intelligently. Committees from both of these groups should cooperate with the American Law Institute, which has produced its monumental contribution on the subject in its Re-Statement of the Law of Torts so far as the questions of aerial trespass and nuisance are concerned.

In the field of legislation covering both the activities of the Federal Government and those of the States, we again have air law divided into two possible groups:

1. Regulatory Legislation.
2. Non-Regulatory Legislation.

I think it may be safely said that regulatory legislation, in order to secure the important objective of uniformity, is a matter for the Federal Government. Non-regulatory legislation the more properly falls under the province of the State as distinguished from the Federal Government. The enforcement of regulatory legislation again falls within the province of the State authorities.

In the field of regulatory legislation, we have the Uniform State Air Licensing Act, which has met with the approval of the American Bar Association, and the approval of the Commissioners on Uniform State Laws. We have the proposal of the Department of Commerce that all States enact into law the simple provision that, prior to engaging in flying activities, either for intrastate or interstate commerce, a Federal license be required as a prerequisite. The only distinction between the Uniform State Air Licensing Act and the recommendation of the Department of Commerce is that, under the optional plan, as suggested by the Uniform State Licensing Act, civil aircraft, flown within the confines of a State, may operate under either a State license or a license issued under the Federal law.

Uniform Code

A Uniform State Aeronautical Code should embody both the principles of the Uniform State Air Licensing Act and the principles of the Uniform State Law for Aeronautics, together with a clear statement regarding lawfulness of flight, which has already been made in the suggested draft, and should give particular regard to the principles referring to the liability of air carriers to passengers, insurance, together with whatever other matters may be considered germane to such a code.

It is regrettable, of course, that such a Uniform Code has not been prepared before this. Action should be taken in the preparation of the Code as soon as possible in order to prevent abortive attempts on the part of State Legislators to enact unwise legislation, or legislation which would not be productive of uniformity, both with regard to regulatory and non-regulatory legislation.

It must be generally conceded that there is an increasingly large field of activity in which the States can properly join in order to supplement the Federal Air Commerce Act. The Federal Act of 1926 was a compromise measure. Orig-

Section 8. **Liability to Passengers. The liability of the operator of an aircraft carrying passengers, for injury or death to such passengers shall be determined by the rules of law applicable to torts on the lands or waters of this state, arising out of similar relationships.

inally, it was drafted to require a Federal license for all aircraft and airmen. As passed by Congress, however, the Air Commerce Act requires a Federal license only in so far as operators and aircraft are engaged in interstate or foreign commerce, as defined by the Act. Other operators of aircraft have the option of securing a Federal license.

The Federal air traffic rules, promulgated by the Department of Commerce, however, apply to all flying, whether commercial or non-commercial, interstate or intrastate. In order to protect interstate commerce by air adequately, uniformity of air traffic regulations is essential to safety. In *Neismonger v. Goodyear Tire and Rubber Co.,* 1929 U. S. An. R. 96, the court held that the air traffic rules would apply to intrastate commerce, if necessary.

Under the air traffic rules, the Department of Commerce seems to be given a very adequate measure of prevention of burden to interstate commerce.

It may be conceded that there should be uniformity of regulation in the following:

1. Regulations governing aviation throughout the country.
2. Airport rules.
3. Marking of airports.
4. State and Municipal legislation for the acquisition and control of airports.
5. Zoning around municipal airports.

Founded on Police Power

At the risk of appearing to be somewhat dogmatic, and yet with a high regard for the constitutional powers reserved to the States, it would appear that regulation of aviation is founded in the Police Power, and that under our constitution the Police Power is vested in the individual States. It is upon the theory that uniformity of air legislation is expedient and desirable in order to protect the interests of interstate commerce that control over aviation activities has centered in the Federal Government. Commerce of an interstate nature is, naturally, a Federal matter. The mere act of flight within the State becomes a matter of State regulation, except when necessary to prevent interference with or a burden upon interstate commerce, or in the regulation of intrastate commerce as incidental to the regulation of interstate commerce.

The American Bar Association has done effective work, beginning with 1911, when Governor Baldwin contended that air carriers should not be mulcted in damages any more than other carriers.

In 1921, the American Bar Association exploded the fallacy of the maxim *"Que cujus est Solum,"* which a certain school of lawyers sought to invoke as a barrier to flying. The American Bar Association led in the adoption of the Federal Air Commerce Act. It may yet in 1933 find the way to a rule of *limited,* rather than a rule of "absolute liability," which will permit air carriers to operate with a high degree of care, in so far as the public is concerned, and yet without assuming financial burdens which would be prohibitive in the maintenance of air transport lines.

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to the court which appointed him or her, but to the Commission.[58]

Once the Commission has made a decision it is immune from all collateral attack and is final unless a petition for rehearing has been filed within the time and in the manner provided by the Act.[59] Even when such a petition has been filed and finally decided, the sole redress of a party aggrieved is to petition for a writ of review to the District Court of Appeals within the time and in the manner by the Act provided. There is no trial *de novo.*[60]

III.

In addition to its jurisdiction as a court, the Commission as such has power and authority to make and enforce Safety Orders of general or special application to secure safety in places of employment within the State.[61] It further operates and guides in a manner analogous to a Board of Directors, the largest insurance company writing exclusively workmen's compensation insurance doing business in the State.[62]

IV.

In cases of controversy arising out of policies issued to a self-employing person furnishing like benefits as under the Compensation Act provided, upon request of the parties, the Commission is authorized to act as a Board of Arbitration.[63]

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58. Lee v. Supr. Ct., 191 Cal. 46; 214 Pac. 985; 10 Cal. I.A.C. 277 (1923).
59. *N. Pac. S.S. Co. v. Soley,* 193 Cal. 138; 223 Pac. 462; 11 Cal. I.A.C. 206 (1924).
60. Sec. 67(b), p. 60, Comp. Act.
61. Secs. 40-50, pp. 48-50, Comp. Act.
62. Secs. 32-50, pp. 39-45, Comp. Act.
63. Sec. 57(b), p. 54, Comp. Act.

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